



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

518-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

MEDI-PLUS PHARMACY  
PO BOX 546  
BARKER TX 77413-0546

#### **Carrier's Austin Representative Box**

Box Number: 15

#### **Respondent Name**

ACE AMERICAN INSURANCE CO

#### **MFDR Date Received**

APRIL 25, 2013

#### **MFDR Tracking Number**

M4-13-2127-01

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** **"BRITISH AMERICAN has not provided any documentation to date to show how it determined Usual and Customary or what its reported 'research' showed, much less how it determined fair and reasonable. Division Rule 134.503 provides that the MAR is the lesser of the provider's usual and customary charge or the amount determined by a formula provided in 134.503(a)(2)."**

**Amount in Dispute:** \$61.32

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "...the DWC benchmarked pharmaceutical allowance to the 'AWP', but allowed the carrier to determine AWP 'utilizing a nationally recognized pharmaceutical reimbursement system (e.g. Redbook First Data Bank Services)...' Rule 134.503(a)(2), 26 Tex.Reg. 10970, December 28, 2001... At that time and in response to a commenter's request for 'lowest' language for the choice of system to determine AWP, the Commission declined the requested language as unneeded. **'The Carrier is required only to use a nationally recognized pharmaceutical reimbursement system. Which system they [the carriers] choose is up to them.'** 26 Tex.Reg. 10980-81, December 28, 2001... Obviously, the assumption was that the carrier would likely choose the lowest priced qualifying system—and it was specifically authorized to do so. This is consistent with the requirement of the Labor Code Section 413.011(d) that any fee guideline be designed to 'achieve effective medical cost control.' Requestor's position seems to be that the medical provider should be able to choose the source of the AWP figure. They contend that reimbursement must be calculated based their Rx-30 system rather than other 'nationally recognized pharmaceutical reimbursement system' sources. That is an incorrect contention for the reasons set out above. In this case, Carrier has chosen and applied a nationally recognized pharmaceutical reimbursement system (Redbook). Accordingly, the calculation was correct under the applicable fee guidelines."

**Response Submitted by:** Flahive, Ogden & Latson, PO Drawer 201329, Austin, TX 78720

## **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 16, 2012 November 12, 2012 December 10, 2012	SUOXONE 8 MG-2MG SL FILM	\$61.32	\$0.00

## **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.307, effective May 25, 2008 33 Texas Register 3954 sets out the procedures for resolving a medical fee dispute.
2. 28 Texas Administrative Code §134.503, effective October 23, 2011, sets out the reimbursement for the pharmaceutical services in dispute.
3. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - TX-W1 – Workers Compensation State Fee Schedule Adjustment.
  - 800 – Reimbursement is based on the applicable reimbursement fee schedule.
  - 902 – This drug has been paid correctly with current AWP rates per Redbook source per TX fee schedule. AWP rates are changed effective 07/01/11.
  - B100 – After review of the re-submitted documentation it has been determined that no additional payment is recommended.
  - 145 – Reimbursement according to State mandated formula (Red Book Source).
  - 028 – Disallowed. This date of service previously processed for payment.

### **Issues**

1. How is reimbursement established for the service(s) in dispute?
2. Did the requestor support its request for additional reimbursement?

### **Findings**

1. Reimbursement for the service in dispute may be established by applying 28 Texas Administrative Code §134.503, effective from October 23, 2011, which states, in pertinent part:
  - (a) Applicability of this section is as follows:
    - (1) This section applies to the reimbursement of prescriptions drugs and nonprescription drugs or over-the-counter medications as those terms are defined in §134.500 of this title (relating to Definitions) for outpatient use in the Texas workers' compensation system, which includes claims:
      - (A) subject to a certified workers' compensation health care network as defined in §134.500 of this title;
      - (B) not subject to a certified workers' compensation health care network; and
      - (C) Subject to Labor Code §504.053(b)(2).
    - (2) This section does not apply to parenteral drugs.
  - (b) For coding, billing, reporting, and reimbursement of prescriptions drugs and nonprescription drugs or over-the-counter medications, Texas workers' compensation system participants shall apply the provisions of Chapters 133 and 134 of this title (relating to General Medical Provisions and Benefits—Guidelines for Medical Services, Charges, and payments, respectively).
  - (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescriptions drugs the lesser of:
    - (1) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed.

- (A) Generic drugs:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee = MAR;
  - (B) Brand name drugs:  $((AWP \text{ per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee = MAR;
  - (C) When compounding, a single compound fee of \$15 per prescription shall be added to the calculated total for either paragraph (a)(A) or (B) of this subsection; or
- (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
- (A) health care provider;

Review of the explanation of benefits, position statements, and other documentation provided by the parties finds that: (1) no contract exists between the parties; and that (2) there are no denial codes or assertions refuting that the amount charged is the usual and customary amount. Consequently, the MAR in this medical fee dispute is established by determining the lesser of the charged amount and the AWP formula pursuant to 28 Texas Administrative Code §134.503(c)(1).

2. 28 Texas Administrative Code §134.503(c)(1) (effective October 23, 2011) states, in pertinent part, that “The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed.”

The Pharmacy Fee Guideline establishes that the Division expects AWP prices to be updated daily. Because the requestor has the burden of proof in this medical fee dispute, it must provide evidence to support that any asserted AWP values used to calculate reimbursement pursuant to §134.503(c)(1) were in effect on the day the disputed drug was dispensed. A mere assertion of the rate in effect on the day that the drug is dispensed is not sufficient.

3. The pharmaceuticals in dispute was dispensed on August 16, 2012, November 12, 2012 and December 10, 2012. After thorough review of the information and documentation provided by the parties, the Division finds:
- The respondent did not provide any evidence to support the asserted AWP price or effective date.
  - In order to refute the carrier’s payment in this medical fee dispute, the requestor alleged that a Rx30 Pharmacy System AWP pricing of 8.44600 per unit for SUOXONE 8 MG-2MG SL FILM, 30 count, NDC 12496120803, should be used as a basis for additional reimbursement. The requestor provided evidence to support the asserted RX30 Pharmacy System AWP price and effective date.

The Division’s AWP database shows an AWP of 8.44600, dated July 1, 2012. The formula is as follows:  
 $8.44600 \times 30 \times 1.25 + \$4.00 = \$280.18$

The total MAR for the services in dispute is \$840.45. The respondent paid a total of \$779.13; for that reason, the Division concludes that the requestor is entitled to additional reimbursement in the amount of \$61.32.

**Conclusion**

For the reasons stated above, the division finds that the requestor has supported its request for additional reimbursement. As a result, the amount ordered is \$61.32.

***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$61.32 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

**Authorized Signature**

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
 March 12, 2014  
 Date

## **YOUR RIGHT TO REQUEST AN APPEAL**

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**